(1)

Supreme Court, U.S.
FILED

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US 99-3350 ICE OF THE CLERK

IN THE UNITED STATES SUPREME COURT

George Meredith, M.D.,
Petitioner,

v.

Carla Stovall, et al.,
Respondents.

On Petition for Writ of Mandamus
to another United States District Court

TO CHIEF JUSTICE WILLIAM REHNQUIST[1]

ON APPEAL ON ORDER OF THE UNITED STATES
TENTH CIRCUIT COURT OF APPEALS, DENVER
(CIRCUIT JUDGES TACHA, PORFILIO, AND EBEL)

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48 pp

QUESTIONS PRESENTED

1. Was the computer random (wheel of fortune) selection of judges in this and parallel cases bypassed?

2. If so why?

3. What percentage of all cases in the two above mentioned courts have "special selection of judges" rather than random computer assignment of judges?

4. And what percentage of federal cases involving the special selection of judges involve pals of the Clintons who are in trouble?

5. Were judges appointed by W.J. Clinton and/or judges friendly to the Clintons' and their pals in trouble, selectively assigned in (these) case(s)? As was the ***modus operendi*** in the US District Court, District of Columbia re: the Clitons' pals in trouble? See pages 11 & 12 **www.stopseaboard.com**

6. Did the Chief Clerk of the US Tenth Circuit Court of Appeals, Patrick Fisher, obstruct justice by not distributing the appellant's reply brief to the members of that appeals court (**and especially to their law clerks**)? Even though the reply briefs were in strict compliance with FRAppP Rule 32 (a) 7 (b) (ii).

QUESTIONS PRESENTED - Continued

7. Did Fisher do the same thing with the petition for rehearing of US 98-114 nka US 98 3079...e.g. failure to distribute brief and /or rehearing brief, in violation of ABA's judicial canon 3. B(4)? Listen to Real Audio petitioner's taped telephone conversation of April 6, 2000 with Fisher re: this. See page 8 www.stopseaboard.com.

8. Did Ann Woodall, secretary to Chief Judge Stephanie Seymore, misrepresent the truth when she told the petitioner that the 10th Circuit Court of Appeals judges in these two cases (US 99-3079 and US 99-3350) were assigned by random computer selection, not by Chief Judge Stephanie Seymore, but instead by the Clerk of the Appeals Court, Patrick Fisher?

9. If so, was Ms. Woodall trying to shield her boss from the same type of charges that have been leveled at Chief Judge Norma Holloway Johnson in the US District Court District of Columbia? That is, specifically selecting judges appointed by or friendly to the Clintons vis a vis Clintons' pals in trouble. Charlie Trie. Mark Jiminez. Webster Hubbell. John Huaung. Rick Hoffman. Carla Stovall. Bill Graves, etc.

QUESTIONS PRESENTED - Continued

10. Were judges (selectively) assigned by Seymore in another appeals case also involving the same District Judge that dismissed US 99-3350 as "frivolous"...District Judge Monte Belot? See page 9 www.stopseaboard.com. **"Judge defends assigning system"**, Robert Boczkiewicz, **Topeka Capital Journal**. Are Judges Mary Beck Briscoe, Deanella Tacha, David Ebel and Stephanie Seymore rallying around Belot so as to preserve his position in 99-3350...Clintons' pals in trouble?

11. Did Graves and Stovall get in over their heads in supporting Seaboard Farms only to find out that Seaboard is but a front for a giant cocaine transshipment criminal enterprise, with the Clintons out front running interference for them? See pages 6 & 7 www.stopseabord.com.

12. Did the appeals court err in not providing an en blanc hearing of US 99-3350 as very few Clinton scandals, short of Chinagate, are of such importance to the security of this once great democracy? Are these "exceptional circumstances?"

PARTIES TO THE PROCEEDING AT THE UNITED STATES TENTH CIRCUIT COURT OF APPEALS

Name and office of every person from whom relief is sought:

William Graves, as private citizen
2nd Floor- State Capitol
Topeka, KS 66612

Carla Stovall, as a citizen
One Kansas Judicial Center
Topeka, KS 66612

Larry Keenan, Esq.
2200 Lakin
Great Bend, KS 67530

Keenan & Boeckman Law Firm
2200 Lakin PO Box 459
Great Bend, KS 67530

Rick Hoffman, CEO
Seaboard Farms, Inc.
9000 W 67th Street
Shawnee Mission, KS 66202

Seaboard Farms, Inc.
9000 W 67th Street
Shawnee Mission, KS 66202

RULE 29.6 STATEMENT

Parent and Subsidiary Corporations: None

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i

LIST OF PARTIES iv

RULE 29.6 STATEMENT.....v

TABLE OF AUTHORITIES.....vii

PETITION FOR WRIT OF MANDAMUS 1

JURISDICTION.....4

DATES OF ORDERS TO BE REVIEWED.....4

STATEMENT OF THE CASE.....5

ARGUMENT.....9

PRAYER..... 11

APPENDIX/Orders to be Reviewed.....

- Monti Belot, 98-1270-MLB (3-30-99)... App. 1
- Monti Belot, 99-1230-MLB (7-7-99).... App. 3
- Monti Belot, 99-1230-MLB (9-9-99).... App. 5
- Monti Belot, 99-1230-MLB (10-26-99).App.18
- Order & Judgement before Tacha, Porfilio, and Ebel, 99-3350.....App. 21
- Patrick Fisher, 99-3350..... App. 26

TABLE OF AUTHORITIES

First Amendment to the Constitution of the United States:

"...or abridge the freedom of speech, or of the press..."

Amend 1. n94 ***Among evils to be prevented by First Amendment press guaranty*** *are not censorship of press merely,* ***but any action of government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential to prepare people for intelligent exercise of their rights as citizens;*** *thus, First Amendment rights are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference."* P.A.M News Corp. v. Butz, (1975) 514 F 2d 272. v.

- **Fourth Amendment:**

"The right of the people to be secure in their...papers and effects..."

- **Fifth Amendment**:

"...nor be deprived of...liberty or property without due process of law"

- **Sixth Amendment**:

  "...shall enjoy the right to a speedy and public trial, by an impartial jury...(and) to have compulsory process for obtaining witnesses in his favor..."

- **Eleventh Amendment:**

  Graves and Stovall have no immunity as their actions in the Free Speech case were those of private citizens and not those of state officials.

- **Although the above Amendments are listed, the issue at hand (Writ of Mandamus compelling district court to try case before a jury and before a randomly selected federal district court judge) deals specially with the Fifth and Sixth Amendments.**

PETITION FOR WRIT OF MANDAMUS

(Addressed to Chief Justice William Rehnquist)*

In re, petitioner George Meredith, MD as authorized by 28 U.S.C § 1651 (a) seeks a Writ of Mandamus from the Supreme Court of the United States to a US District Court commanding that a US District Court to hear US 99-3350 (aka 99-1230 MLB). A case which that the US District Court (Wichita) dismissed without providing for a meeting of the parties. A case which the lower court branded as "frivolous" without providing for a single deposition. See page 7 view: text size medium www.stopseaboard.com (Hon. Monti Belot-Meredith I) And, apparently, without considering any of the meticulously documented evidence that clearly demonstrated that the respondents repeatedly, openly and blatantly abridged the petitioner's Free Speech. To see both Free Speech cases (Meredith I US 98-1270 MLB and Meredith II US 98-1230

* It is pointless to address this complaint to Justice Steven Breyer (assigned to the US Tenth Circuit Court of Appeals) as WJ Clinton has shown in this venue and in numerous other venues: Judge Paul Friedman and Mark Jimenez, Judge Henry Kennedy and Howard Glicken, Judge James Robertson and Charlie Trie and Mike Espy, and Tyson Food's executive Archie Schaffer, Judges Paul Friedman, James Robertson, and Emmet Sulliva....as WJ Clinton has shown in multiple venues to have Federal Judges that he has appointed (or that are for one reason or another somehow indebted to him)...to have cases against Clinton's pals, decided by these judges, almost always, in favor of those Clinton pals in trouble.

JTM/MLB nka US 99-3350 log onto page 7 and pages 7&12, respectively, www.stopseaboard.com.

In a series of cases directly related to the petitioners right (as a wildlife editorialist, over eighteen years)...in a series of cases the Chief Judges of the US District Court (Wichita) and of the US Tenth Circuit Court of Appeals by-passed the computer random (wheel of fortune) selection of judges to hear these cases. And instead, at first, selected only judges appointed by WJ Clinton himself. And then years later, when the petitioner complained of same, appointed judges friendly to the Clintons and their pals in trouble.

These cases and the involved judges are:

- **US 96 M 6084**, Magistrate Judge Karen Humphries, US District Court (shoot duck with leadshot) (Wichita)

- **US 98-114,** Magistrate Judge Karen Humphries, US District Court (7 year old "tax case") (Wichita)

- **US 98-1270 MLB,** Judge Monti Belot, US District Court (Wichita) (Meredith I Free Speech)

- **US 99-1230,** Judge J. Thomas Marten, US District Court (Wichita)/Judge Monte Belot (Meredith II Free Speech)

- **US 99-3079**, (aka US 98-114) Judge Mary Beck Briscoe, US 10th (appeal of tax case) Circuit Court of Appeals (Denver)

- **US 99-3350**, (aka US 98-1230) Judge Mary Beck Briscoe, US 10th (appeal of Meredith II) Circuit Court of Appeals (Denver) – Briscoe heard case, re: en blanc hearing and then after Meredith complained to Chief Judge Stephanie Seymore that the randomized computer selection of judges to hear this Free Speech appeal (Meredith II) was once again bypassed…for political reasons, the petitioner maintains. See page 13, www.stopseaboard.com. …then Seymore rearranged the panel to hide the continuing presence of Briscoe in these Free Speech cases – see Patrick Fisher and Ann Woodall taped telephone conversations, page 13, www.stopseaboard.com, of June 2000 which support this thesis.

David M. Bresnaham "playing Clinton's Dangerous Games" World Net Daily, page 13 www.stopseaboard.com. "Clinton… has built his power base to a point where he…controls virtually everything and everyone. Every federal agency, every bureaucracy…are under the total control of Clinton…he (has) methodically replaced every agency head who would not bow to his every wish…(they) were selected based on loyalty, not skills

and experience...people with no conscience who will do as they are told to protect their own position..."

JURISDICTION

- ***28 USC: 1651(a)***

Statutory provision which confers the US Supreme Court jurisdiction to remand this case back to district **court for jury trial before a randomly selected federal district judge**.

DATES OF ORDERS TO BE REVIEWED (see appendix):

- March 30, 1999:

Monti L. Belot, United States District Court (Wichita)

- July 7, 1999:

Monti L. Belot, United States District Court (Wichita)

- June 23, 2000:

Tacha, Porfilio, and Ebel, United States Tenth Circuit Court of Appeals

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STATEMENT OF THE CASE

In Re Meredith v. Stovall et al the petitioner alleges that:

1. The respondents abridged and chilled his Free Speech to speak out against the pals of WJ Clinton and HR Clinton....Carla Stovall, William Graves, Rick Hoffman, and Seaboard Farms.

2. The defendants through multiple selective prosecutions repeatedly and viciously abridged the petitioners Free Speech to the detriment of the people (and especially the children) of Kansas and beyond. People who have the right to protect their clean air and water resources.

3. In the first two selective (malicious) prosecutions, US 96 M 6084 and US 98-114WEB, the Chief Judge of the US District Court (Wichita), Thomas VanBebber, bypassed the random selection of judges and, instead, selected a Clinton appointee (Magistrate Judge Karen Humphries) to hear both cases important to Clinton and his pals who are attempting to convert the relatively pristine air and water resources of Kansas into Asia's sewer...for their own economic benefit. Petitioner spoke out, editorially, against same on five separate occasions.

And on five separate occasions was punished with the aggressive, selective prosecutions that are the hallmarks of Clinton's "enforcers". See pages 5-6, **www.stopseaboard.com**. As was the case with Sherry Hall, Linda Tripp, Paula Jones, Gary Aldrich, Russell Welch, Larry Nichols, Joseph Farah, Newt Gingrich, Robert Livingston, the Heritage Foundation, the CATO Institute, and literally hundreds, perhaps thousands, of Americans who have stood

up to the Clintons... who have stood up for their Constitutional Rights. To see involved editorials and implicating time line go to page 4 (medium text size) **www.stopseaboard.com**, George Meredith's **editorial profile**.

4. At issue are not the merits of the Free Speech lawsuit. But instead, the special assignment of Clinton appointed federal judges on both the district level as well as the appellate level. And then years later, once the **petitioner** learned of and **complained about the bypass of the random computer assignment of judges in these cases**, the assignment of judges who were favorable to WJ Clinton, for reasons that will become clearer as time goes by...and then assignment of judges who were predisposed to protecting Clinton pals who were, once again, in trouble.

5. And writers Jerry Seper, Pete Yost, William Safire, Robert Novak, Ron Rotunda, and others have shown that this same modus operandi (disregarding the random computer selection of judges in federal cases) by Chief Judge Norma Holloway Johnson (US District Court, District of Columbia) ...this same M.O. had been used to protect other Clinton pals in trouble. These include Howard Glicken, Mark Jiminez, Charlie Trie, Pauline Kanchanalak, Webster Hubbell, Archie Schaffer, Mike Espy, and Don Tyson. See pages 7-9 www.stopseaboard.com.

6. On June 23, 2000 Petitioner asked Chief Judge Seymore's secretary, Ann Woodall, by telephone[1] if there had been a randomized computer selection of appellate judges in these two cases: the tax case US 99-3079 and in the second Free Speech – Meredith II case 99-3350 page 13 www.stopseaboard.com Miss Woodall, at this point, engaged in a blatant misrepresentation of the facts when she stated that:
"(these) cases were assigned in a random fashion" – this is patently false and the mathematical model (on page 9 www.stopseaboard.com ➢ appeal – petition for rehearing en blanc...tax case) speaks to the mathematical impossibility of these Clinton appointees hearing 98-114 WEB

[1] To hear Real Audio recording of this telephone conversation, go to page 13 medium text size, www.stopseaboard.com and click onto Ann Woodall

nka 99-3079 (tax case) and then 99-3050 (Meredith II) cases by random assignment.

7. There is a mechanism to deal with such inequities…it's the presentation of a case to the court of appeals, en blanc. Let the entire court of appeals hear the case and let them decide as a whole…rather than some backhanded appointment of judges favorable to WJ Clinton and his pals in trouble. **The petitioner asked for and was denied, by a specially selected three judge panel,** this corrective procedure.

8. Then listen to Woodall trying to shift the assignment burden in the two appeals cases, mentioned above, away from her boss and onto the shoulders of Clerk of the Court Patrick Fisher. Ann Woodall tapes and text, page 13 **www.stopseaboard.com** Chief Judges, not court clerks, assign cases.

9. Finally, **Patrick Fisher took it upon himself not to distribute the plaintiff's (petitioner) reply briefs** in 99-3350 to the members of the appeals court even though petitioner was in complete compliance with FRAppP Rule 32 (a)7(b)(ii) **Obstructing the administration of justice**. Keeping this embarrassing case away from the judges **and especially from the**

law clerks assigned to this court of appeals. Listen to Fisher explaining this maneuver, page 13 **www.stopseaboard.com**.

ARGUMENT

A troubling pattern has developed in the United States, re: the administration of justice when these proceedings involve Clinton pals in trouble. Writers William Safire, Pete Yost, Jerry Seper, and a host of other writers have documented same in the Court of Chief Judge Norma Holloway Johnson, and elsewhere. Specifically, assignment of judges appointed by or friendly to the Clintons, re: their pals in trouble.

The Clintons have shown, in this regard, an ability to "network" with a variety of courts and law enforcement agencies, some under their direct control, and some not.

This writ of mandamus is being sought to afford the petitioner an opportunity to protect his Free Speech. And to be compensated for the blatant and repeated selective (malicious) prosecutions by the respondents against the petitioner in their attempts to abridge and chill his Free Speech.

In the process of investigating these Free Speech violations, the petitioner "uncovered" a giant cocaine transshipment criminal enterprise involving, some or all, either directly of indirectly, of the respondents. There are four testimonies on the petitioners website, pages 3-5, **www.stopseaboard.com,** that support this thesis. And there are numerous other news articles also on stopseaboard.com that support this, pages 3-5 **www.stopseaboard.com**.

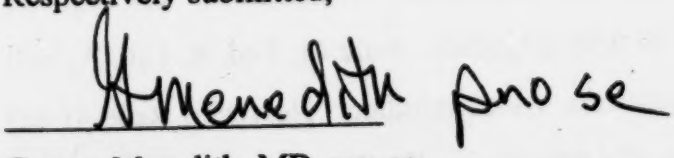
Irregardless, the special selection of judges appointed by or friendly to the Clintons' pals in trouble should stop…immediately! Starting with this lawsuit! The Chief Justice of this court should stand up to the Clintons. The Chief Justice must make it crystal clear to the Clintons that in these United States the administration of Justice much be blind. And this subversive behavior by some in the federal judiciary must stop right now!

PRAYER

The petitioner prays that the Chief Justice admonish the lower courts for their use of judges appointed by, or otherwise, indebted to the Clintons to hear cases of these Clintons' pals. Rather than the time honored random selection of judges.

Furthermore, the petitioner prays that the Chief Justice remand this case to a US District Court for trial...before a randomly selected federal (trial) judge...in a US District Court other than those which have been corrupted by, especially, HR Clintons pals in the US Tenth Circuit. To a federal district court far away from the giant hog confinement corporations...and far away from our pourous southern borders. There must be such a court somewhere...Indiana, Ohio, upstate New York or Eastern District of Virginia. There must be a federal trial court out there somewhere that hasn't been corrupted by these people!

Respectively submitted,



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App. 1

DUPLICATED COURT DOCUMENT

US 98-1230 JTM/MLB
nka US 99-3350

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

GEORGE MEREDITH, M.D.,	)	
	)	
Plaintiff,	)	
	)	**CIVIL ACTION**
v.	)	
	)	No. 98-1270-MLB
CARLA STOVALL, et al.,	)	
	)	
Defendant.	)	
	)	

ORDER

Before the court is plaintiff's motion to dismiss (Doc. 52). Only one of the defendants has responded, Joel Jackson. He requests that the dismissal be with prejudice. Rule 41, Fed. R. Civ. P., will not allow for a dismissal, with prejudice. However, Rule 41 (d) speaks to the costs of a previously-dismissed action. If this case, which is plainly frivolous on its face, is filed again in this court,

the undersigned directs that it is to be assigned to him and the undersigned will utilize Rule 41 (d) to the fullest extent to compensate defendants for their costs associated with responding to plaintiff's frivolous claims.

This case is dismissed in its entirety, without prejudice. Costs are taxed to plaintiff.

IT IS SO ORDERED.

Dated this 30th of March 1999, at Wichita, Kansas.

Monti L. Belot

UNITED STATES DISTRICT JUDGE

DUPLICATED COURT DOCUMENT

FILED
JUL 0 7 1999

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

GEORGE MEREDITH, M.D.	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	**CIVIL ACTION**
	)	No. 99-1230-MLB
CARLA STOVALL, WILLIAM GRAVES,	)	
RICK HOFFMAN, SEABOARD FARMS,	)	
LARRY KEENAN, KEENAN and	)	
BOECKMANN LAW FIRM,	)	
	)	
Defendants.	)	

ORDER

Before the court is defendants Hoffman and Seaboard Farms, Inc.'s motion for award of costs and for a stay pending payment of costs (Docs. 7 and 8). The motion to stay is sustained.

Plaintiff shall respond to the motion for costs no later than July 16, 1999. Plaintiff's response shall be limited to five double-spaced pages, with no exhibits or attachments. No request for additional time to respond will be granted.

IT IS SO ORDERED.

Dated this 7th day of July 1999, at Wichita, Kansas.

Monti L. Belot

UNITED STATES DISTRICT JUDGE

DUPLICATED COURT DOCUMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

GEORGE MEREDITH,	)	
Plaintiff,	)	CIVIL ACTION
v.	)	No. 99-1230-MLB
CARLA STOVALL, et al,	)	
Defendants.	)	

ORDER

Before the court are the following:

1. Defendants Hoffman and Seaboard Farms, Inc.'s motion for award of costs and motion for a stay pending payment (Docs. 7 and 8);

2. Plaintiff's response (Doc. 12);

3. Defendants Larry Keenan and Keenan and Boeckman Law Firm's motion for an award of costs and for a stay

(Doc. 13);

4. Defendants Keenan and Keenan and Boeckman Law Firm's motion to dismiss (Doc. 15);

5. Defendant Bill Graves' motion to dismiss (Docs. 18 and 19);

6. Defendant Carla Stovall's motion to dismiss (Doc. 20 and 21) .

Background

The present case, in most important respects, is the same as an earlier case filed in this court by plaintiff, proceeding pro se, captioned Meredith v. Stovall, et al., No. 98-1270 (Meredith I).

While it is difficult to make sense of the allegations in either case, the complaint in Meredith I, broadly construed, alleged a conspiracy or conspiracies between defendants, and other individuals not named as defendants, to violate plaintiff's First Amendment rights in connection with his complaints about corporate hog farms in Kansas and the Kansas tobacco settlement. Plaintiff, who claims to be a "collateral descendent of James Madison" wrote letters which were published in various newspapers complaining about the settlement and hog farms. Around the time the letters were written, plaintiff evidently had been or was being prosecuted for violations of wildlife laws and, in

addition, was involved in a dispute with the Internal Revenue Service. Plaintiff somehow has managed to envision a sinister, conspiratorial connection between his criticisms of corporate hog farms, the tobacco settlement, the.wildlife violations and his tax problems. For example, paragraph nine of the complaint alleged, in pertinent part:

9. Within days after the May 8, 1998, editorial, *"Kansas Left to Suffer with Seaboard Farms,"* (Exhibit "I") appeared in the Garden City Telegram, IRS Revenue Officer, Larry Inman, was in the Plaintiff's office with a "collection summons". (Exhibit "J") The Plaintiff believes that he can prove through the use of subpoenaed telephone logs, fax messages, NCIC reports, FBI profiles, AFIS, ALIX, BJA, BJS, BLS, CDC, DA, DEA, DOD, DOT, FEC, USFWS, JAG, OSHA, VA, IRS et cetera profiles, written correspondence, and other state and federal databases that are kept on most Americans, including the Plaintiff. . the Plaintiff believes that he can prove that Mr. Hoffman (probably working through United States Commerce Department contacts) in consultation with Governor Graves, Ms. Stovall and Mr. Jackson engaging in a (fractional) conspiracy using IRS agents Inman and Berry and KBI agents Greene and Hovel and their supervisors, Barton County Deputy Sheriff Hapes, and Kansas Department of Wildlife and

Parks Agents Mike Ehlebradt and Phillip Kirkland, as knowing (or unknowing) pawns in this scheme to abridge the Plaintiff's First Amendment rights and thus prevent "free and general discussion of public matters as seems absolutely essential to prepare people for intelligent exercise of their rights as citizens." Thus, abridging the Plaintiffs First Amendment rights as follows . . .The complaint contained additional, far-reaching allegations which, even when given the benefit of every doubt, are nonsensical.

Defendants filed motions to dismiss which were referred to Magistrate Judge John Thomas Reid for a report and recommendation. Before Judge Reid could issue his report and recommendation, plaintiff filed a motion for temporary restraining order which **purported to name additional defendants, including** attorney Larry Keenan (Doc. 49). The motion was denied by minute order (Doc. 51). Plaintiff then moved to dismiss stating: "Now comes the plaintiff who is advising this court that he wishes to dismiss this civil lawsuit. And that he does so without prejudice. The plaintiff trusts that the defendants have profited [sic] from this lesson in constitutional law and free speech." (Doc. 52 filed February 26, 1999). The motion was not served on Larry Keenan and the other defendants newly named in the motion for temporary restraining order. Keenan filed a motion to dismiss on his own behalf and on behalf of another newly-named defendant, an elderly nun named Sister Charitas Stienke (Doc. 54). The

motion was never ruled upon because Meredith I had been dismissed.

Defendant Jackson responded to plaintiff's motion, requesting that the dismissal be with prejudice. In response to Jackson's motion, the court entered an order which stated, in pertinent part:

Rule 41, Federal Rule of Civil Procedure, will not allow for a dismissal, with prejudice. However, Rule 41(d) speaks to the costs of a previously-dismissed action. If this case, which is plainly frivolous on its face, is filed again in this court, the undersigned directs that it be assigned to him and the undersigned will utilize Rule 41(d) to the fullest extent to compensate defendants for their costs associated with responding to plaintiff's frivolous claims. The order of dismissal of Meredith I was filed on March 30, 1999 (Doc. 57).

Plaintiff filed the instant case (Meredith II) on June 9, 1999. Some of the defendants were the same as those named in Meredith I: Kansas Attorney General Carla Stovall, Governor Bill Graves and Rick Hoffman, alleged to be an officer of Seaboard Farms. **Added as named** defendants were Seaboard Farms' and attorney Larry Keenan, as well as the Keenan and Boeckman Law Firm. The allegations of the complaint, however, were essentially the same: a "(fractional) conspiracy" to deny plaintiff his First

Amendment rights to complain about hog farms and the tobacco settlement. For example, plaintiff alleged that after one of his letters to the editor was published:

> IRS Revenue Officer, Larry Inman, was in the plaintiff's office with a "collection summons." Inman and the plaintiff had been locked in an IRS collection battle for almost two years. Inman refusing to provide results of the 1994-1995 DOJ investigation into the Waitzer matter and the results of the 1995-1996 IRS IG investigation into the same matter. The plaintiff contending that it would be impossible to know his true IRS liability, if any, without the results of these two investigation [sic] into the alleged racketeering activities of IRS Revenue Officer Lawrence Turner, Edwin Waitzer and Richard Waitzer. The chances of this sequence of events just 10 days after this Garden City Telegram editorial but some 640 days after Inman's "collection efforts" had begun were 10/640 or one chance in sixty four.

(Doc. 1 at 6). The complaint went on to repeat allegations regarding wildlife violations which, in plaintiff's mind, somehow are connected to his claims regarding attorney Keenan:

'It appears that plaintiff tried to sue Seaboard Farms in Meredith I. He named David Oslat, Seaboard's "registered agent," as a defendant.

Great Bend attorney Larry Keenan, Esq. wrote to the plaintiff on February 9, 1998 and inquired about settling a $20,000 medical bill that the plaintiff was trying to collect from Mr. Keenan's client Leo Hall (and his family and farmhands) Stafford County Case Number 98 C-7. When the plaintiff met with Mr. Keenan in his law office on or about February 24, 1998, Mr. Keenan advised that if the plaintiff would dismiss the $20,000 Leo Hall debt and simultaneously dismiss another lawsuit against one of Mr. Keenan's other "clients" (Scott Moeder) Stafford County Case Number 98 C-5, then Mr. Keenan would "have the pheasant retrieve charge dropped." Larry Keenan went on to say, at the same February 24 meeting "You need to stop writing those anti-seaboard/soft money/Stovall Graves editorials. They just get you in trouble. Why, I told (my own son) Marty to stop writing editorials for the same reason. They just get you in trouble." In so doing Keenan sought to chill the plaintiff's First Amendment rights in violation of USCS n95 and n124 as outlined above.

(Doc. 1 at 12). The complaint contained many more allegations regarding attorney Keenan and others, including a state judge and the elderly nun, none of which bear repeating.

Defendants Hoffman and Seaboard Farms have submitted a claim for attorney's fees and expenses of $3,147.38 (Doc. 8). Defendant Larry Keenan has submitted a claim for $750 for the expenses incurred in responding to plaintiff's motion for temporary restraining order in Meredith I. Plaintiff has not objected to the amounts claimed and the court finds them to be reasonable.

By its order of July 7, 1999, the court sustained defendants Hoffman and Seaboard's motion for stay and ordered plaintiff to respond to their motion for costs. The court directed that plaintiff's response be limited to five double-spaced pages with no exhibits or attachments. Plaintiff responded, but in violation of the court's order attached a letter to Chief Judge Van Bebber and a press release concerning Judge Mary Briscoe's appointment to the Tenth Circuit. Plaintiff's letter to Judge Van Bebber alleged, among other things, that "on order from Rick Hoffman's and Don Tyson's crony W. J. Clinton, no less. The manipulation of the IRS, of Magistrate Judge Karen Humphries [sic] and Tenth Circuit Court Judge Mary Beck Briscoe in this case could have only come from Clinton himself." The response itself was silent with respect to the propriety of costs. Rather, it essentially restated and expanded upon plaintiff's conspiracy allegations.

Discussion

Fed. R. Civ. P. 41(d) provides:

Costs of Previously-dismissed Action. If a plaintiff who has onc dismissed an action in any court commences an action based upo or including the same claim against the same defendant, the cou may make such order for payment of costs of the action previousl dismissed as it may deem proper and may stay the proceedings i the action until the plaintiff has complied with the order.

The court finds that plaintiff's claims against Hoffman ar the same in Meredith I and Meredith II. Although plaintiff did nc name Seaboard Farms as a defendant in the caption in Meredith it was his intention to do so. The court finds that plaintiff's claim against Seaboard Farms are the same in Meredith I and Meredit II. Plaintiff did not name Larry Keenan as a defendant in th complaint in Meredith I. However, he added Larry Keenan as defendant in his motion for a temporary restraining order. The allegations about Larry Keenan in the motion for temporar restraining order and in the complaint in Meredith II ar substantially the same.

Rule 41(d) speaks to payment of "costs" but does not specifically mention attorney's fees. There is no published Tenth Circuit case construing Rule 41(d). The only published District of Kansas case is Wahl v. City of Wichita, Kansas, 701 F. Supp. 153

(1988). The city sought an order requiring plaintiffs to pay costs and attorney's fees from a previously dismissed state court action. The court analyzed the request in light of four factors set forth in Phoenix Canada Oil Co. Ltd. v. Texaco, Inc., 78 F.R.D. 445 (D. Del. 1978): (1) whether costs were assessed by the judge in a prior action; (2) whether the parties to the action were the same; (3) whether a showing of financial ability was made; and (4) the likelihood of plaintiff's success in the second suit. Applying these factors, the court concluded that an award of costs and attorney's fees was not warranted. The decision does not discuss whether attorney's fees are awardable under Rule 41(d).

The majority of the cases have held that attorney's fees can be awarded as part of Rule 41 (d) costs. The most recent case appears to be Loubier v. Modern Acoustics, Inc., 178 F.R.D. 17 (D. Conn. 1998). The court observed:

An award of costs under Rule 41(d) is discretionary with the court. Zucker v. Katz, 708 F. Supp. 525, 539 (S.D.N.Y. 1989). Only reasonable costs are recoverable, and the courts have generally allowed the recovery of attorney's fees as part of the costs. Id. at 539; Evans v. Safeway Stores, Inc., 623 F.2d 121 (8th Cir. 1980) ; Esauivel v. Arau, 913 F. Supp. 1382, 1392 (C.D. Calf. 1996); Behrle v. Olshansky, 139 F.R.D. 370 (W.D. Ark. 1991), appeal

dismissed, 966 F.2d 1458 (8th Cir. 1992); Whitehead v. Mille Brewing Co., 125 F.R.D. 581 (M.D. Ga. 1989). But see Simeone v First Bank Nat'l Ass'n, 125 F.R.D. 150, 155 (D. Minn. 1989 (declining to include attorneys' fees).

The court also noted that there is no requirement in Rul 41(d) or the relevant case law that a defendant must show bad fait on the part of a plaintiff in order to recover costs and that there i authority that a plaintiff's motive in dismissing the prior actio may.be considered. (Id. at 22). See also Anders v. F.P.A. Corp 164 F.R.D. 383, 387-91 (D. N.J. 1995).

Applying the factors set forth in Wahl v. City of Wichita, th court finds: (1) costs were ordered assessed to plaintiff in the orde dismissing Meredith I. However, the costs have not been paid; (2 the parties in Meredith I and Meredith II are the same; (3) plaintif has made no claim of financial inability to pay costs. He is practicing physician; and (4) the likelihood of plaintiff's success i Meredith II is nil. In addition, the court notes that plaintiff wa warned that Rule 41(d) would be invoked if he filed a secon action. Plaintiff's reason for dismissing Meredith I, that it taugh defendants a "lesson in constitutional law and free speech," doe not serve as a valid explanation for filing either Meredith I o Meredith II. Indeed, one must ask why, if plaintiff apparently

believed defendants learned their lesson in Meredith I, Meredith II was necessary.

In conclusion, the court recognizes that imposition of costs and attorney's fees under Rule 41(d) is discretionary. There are cases in which application of Rule 41(d) would not be warranted. This is not one of them. On the contrary, if application of Rule 41 (d) is not appropriate in this case, it is difficult to imagine when it would be.

The motions of Hoffman and Seaboard Farms (Docs. 7 and 8) and Larry Keenan (Doc. 13) are sustained. Plaintiff shall pay to counsel for Hoffman and Seaboard the sum of $3,147.38. He shall pay to Larry Keenan the sum of $750. Both payments shall be made no later than September 30, 1999. Counsel for defendants shall notify the court whether the payments have been made. If full payments are not made as ordered herein, Meredith II shall be dismissed, with prejudice, as to all defendants and judgment in favor of defendants for the costs shall be entered. If full payments are made, the stay shall be lifted and plaintiff shall respond to the pending motions to dismiss no later than October 15, 1999.

IT IS SO ORDERED.

Dated this 9th day of September 1999, at Wichita, Kans

Monti L. Belot
UNITED STATES DISTRICT JUDGE

DUPLICATED COURT DOCUMENT

FILED
OCT 26 1999
RALPH L. DeLOACH, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

GEORGE MEREDITH,	)	
Plaintiff,	)	
	)	CIVIL ACTION
v.	)	No. 99-1230-MLB
CARLA STOVALL, et al,	)	
Defendants.	)	

ORDER

Before the court are the following:

1. Plaintiff's "Petition for Permission for Interlocutory Appeal . . ." (Doc. 24);*
2. Plaintiff's "Motion for Charge [sic] In Venue" (Doc. 25) ;

3. Defendant Keenan's response to order (Doc. 26); and

4. Defendants Hoffman and Seaboard Farms' Notice of Nonpayment (Doc. 31).

By its order of September 9, 1999 (Doc. 23), the court directed plaintiff to pay counsel for defendants certain sums representing costs and attorney's fees expended in the defense of a previously dismissed action. Fed. R. Civ. P. 41(d). The court stayed further proceedings in this case until plaintiff complied with the order and directed that if the payments were not made by September 30, 1999, this case would be dismissed, with prejudice, as to all defendants and judgment in favor of defendants for the costs would be entered. Instead of paying the costs and fees, plaintiff sought permission from the Court of Appeals to take an interlocutory appeal and to change venue. No action has been taken by the Court of Appeals with respect to plaintiff's applications. Defendants have filed statements, which plaintiff has not controverted, indicating that plaintiff has not paid the fees and costs ordered by the court.

'Filed in the Tenth Circuit

Out of an abundance of caution, the court has reviewed plaintiff's responses to all defendants' motions to dismiss (Dots. 2730). Apart from being totally non-responsive to the issues raised in the motions, the responses amount to insulting and malicious, drivel which merits no discussion. Defendants' motions are sustained for the reasons stated therein.

Accordingly, this case shall be dismissed, with prejudice, as to all defendants. Furthermore, the clerk shall enter judgment against plaintiff in favor of defendants Rick Hoffman and Seaboard Farms, Inc. in the amount of $3,147.38 and in favor of defendants Larry Keenan and Keenan and Boeckman Law Firm in the amount of $750. Finally, the costs of this action shall be assessed against plaintiff.

IT IS SO ORDERED.

Dated this 25th day of October 1999, at Wichita, Kansas.

Monti L. Belot
UNITED STATES DISTRICT JUDGE

DUPLICATED COURT DOCUMENT

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

GEORGE MEREDITH, M.D.,	)	
	)	
Plaintiff-Appellant,	)	
	)	
	)	
v.	)	No. 99-3350
	)	D.C. No. 99-CV-1230
CARLA STOVALL; WILLIAM GRAVES; RICK HOFFMAN; SEABOARD FARMS; LARRY KEENAN; KEENAN AND BOECKMAN LAW FIRM, Defendants-Appellees	)	

ORDER AND JUDGEMENT

Before **TACHA, PORFILIO,** and **EBEL,** Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of

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* This order and judgement is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation or orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

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this appeal. See Fed. R. App. P. 34 (a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Plaintiff George Meredith, M.D., appearing pro se, brought this action under 42 U.S.C. § 1983, asserting that defendants conspired to violate his First Amendment rights due to his vocal opposition to the Kansas tobacco settlement and corporate hog-farming operations. He appeals from the district court's October 26, 1999 order that dismissed his complaint and reiterated the court's September 9, 1999 order that he pay specified costs and attorney's fees to defendants Rick Hoffman, Seaboard Farms, Inc., Larry Keenan, and Keenan and Boeckman Law Firm under Fed. R. Civ. P. 41(d) for filing a second complaint against them after the first one was dismissed. We have jurisdiction under 28 U.S.C. § 1291. We construe plaintiff's

pro se pleadings liberally. See Haines v. Kerner, 404 U.S. 519, 520 (1972).

Whether the basis for the district court's dismissal is Rule 12(b) or Rule 41(b) is not crystal clear. The district court stated in its October 26 order, however, that it was dismissing plaintiff's complaint for the reasons advanced in defendants' motions to dismiss, that is, for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1), for insufficiency of service of process under Rule 12(b)(5), and for failure to state a claim under Rule 12(b)(6). See R., Vol. I, doc. 33, at 2; see also id., doc. 16, at 1, doc. 19, at 1, doc. 21, at 1. "[W]e review de novo the district court's grant of a motion to dismiss pursuant to 12(b)(6)." GFF Corp. v. Associated Wholesale Grocers, Inc., 130 F.3d 1381, 1384 (10th Cir. 1997). "A 12 (b)(6) motion should not be granted 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Id. (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). Plaintiff's complaint is frivolous and conclusory. We hold that Rule 12 (b)(6) provides a sufficient basis for its dismissal.

Rule 41 (d) states:

If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it

may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

Fed. R. Civ. P. 41 (d). Under the language of Rule 41 (d), the decision whether to impose costs and attorney's fees is within the discretion of the trial court. See also 8 James Wm. Moore at el., Moore's Federal Practice § 41-70 [1] (citing cases holding that award of costs is discretionary), § 41-70 [6] (citing cases holding that attorney's fees are available under Rule 41(d)) (3d ed. 1997). We therefore review the district court's imposition of costs and attorney's fees in this case for abuse of discretion. "The purpose of the rule is to prevent the maintenance of vexatious law suits and to seduce, where such suits are shown to have been brought repetitively, payment of costs for prior instances of such vexatious conduct." United Transp. Union v. Maine Central R.R., 107 F.R.D.
391, 392 (D.Me. 1985). Accordingly, we find no abuse of discretion in this case, and affirm the award in favor of defendants Rick Hoffman, Seaboard Farms, Inc., Larry Keenan, and Keenan and Boeckman Law Firm.

Plaintiff's notice of appeal from the March 17, 2000 decision of this court not to hear oral arguments is construed as a renewed motion for oral argument, and denied. Plaintiff's filing

of a supplement appendix is construed as a motion for leave to file a supplemental appendix, and granted.

The judgment of the United States District Court for the District of Kansas is AFFIRMED. The mandate shall issue forthwith.

Entered for the Court

David M. Ebel
Circuit Judge

DUPLICATED COURT DOCUMENT

United States Court of Appeals for the Tenth Circuit

OFFICE OF THE CLERK

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Clerk of Court

Elisabeth A. Shumaker
Chief Deputy Clerk

June 23, 2000

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Re: 99-3350, Meredith v. Stovall
Dist/Ag docket: 99-CV-1230

Dear Clerk, Counsel, and Mr. Meredith:

The court's order and judgement was filed in the subject case today. A copy is enclosed.

Enclosed for the clerk of the trial or the named agency, is a certified copy of the order and judgement filed in this case which

is issued as the mandate of this court. See Fed. R. 41(a). Please file it in the records of your court of agency.

Please acknowledge receipt of this mandate by file stamping and returning the enclosed copy of this letter. Any original record will be returned to you at a later date.

Please contact this office if you have questions.

Sincerely,

PATRICK FISHER
Clerk

By:_____

Deputy Clerk
PF:kjs

cc: Monti L. Belot, District Judge

_____